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IN THE

Supreme Court of the United States

OCTOBER TERM, 1976.

No. 76-14

CITY OF CHICAGO AND MICHAEL A. CARDILLI,
Petitioners,

vs.

MICHAEL L. SHAKMAN, ET AL.,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR RESPONDENTS IN OPPOSITION

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STATEMENT OF THE CASE

This case involves findings of civil contempt entered by the United States District Court for the Northern District of Illinois against Mr. Michael Cardilli and the City of Chicago for violation of a consent Judgment previously entered in the case. Mr. Cardilli was Director of Administration for the City's Department of Streets and Sanitation.

The underlying substantive issues of this lawsuit are not now before the Court. Nor does the Petition concern the propriety of remedial orders entered by the District Court as a consequence of the contempt proceeding. Rather, the Petition

only concerns the District Court's findings of civil contempt for violation of the consent Judgment.

The Consent Judgment

The Judgment, entered May 5, 1972, by consent of the parties, prohibited the City of Chicago, as well as various other state and county office holders, and their officers and employees from coercing governmental employees into doing partisan political work. Paragraph E(1) of the Judgment enjoined the conditioning or basing of any term or aspect of non-policy-making governmental employment on political reasons or factors. Paragraph E(2) prohibited persons bound by the Judgment from causing or permitting public employees to do political work on public time.

Under the Judgment the District Court also retained jurisdiction to enter further orders required to implement and carry out the terms of the Judgment. [The applicable portions of the consent Judgment are set forth in the opinion of the Court of Appeals. Petition 2a-3a]

The Civil Contempt Petition

The civil contempt petition brought by plaintiffs [respondents here] alleged that the injunctive provisions of the Judgment were violated when City officials, including Mr. Cardilli, sought in December, 1974, to coerce and intimidate City workers into circulating petitions of candidacy for Mayor Daley for the 1975 Chicago mayoral elections. This was alleged to have taken place on City time. The contempt petition sought findings of civil contempt and asked for remedial relief, both to eradicate the effect of the violations and to implement and assure compliance with the Judgment. Contemporaneously, plaintiffs moved the Court for an order directing the City and other defendants to give their employees prior to the 1975 mayoral elections additional notice of their rights under the Judgment.

The District Court determined to hear the evidence on the contempt petition before ruling on the request for further remedial relief.

The Evidence

The testimony at the contempt hearing showed clear—indeed admitted—violations of the Judgment. [The testimony is discussed accurately in the opinion of the Court of Appeals. Petition 3a-5a]

Basically, the evidence showed that a number of City sanitation workers from the City's Third Ward were summoned to City Hall on December 19, 1974, during working hours, by Mr. Cardilli and were directed to take and circulate petitions of candidacy for Mayor Daley for the City's 1975 mayoral primary elections. The leadership of the Democratic Party organization in the Third Ward (a predominantly black area) had recently decided not to support Mayor Daley's reelection.

A principal witness, Mr. George Jones, testified that he and five other untenured City garbagemen from the Third Ward were ordered by their superintendent to report to City Hall. They were then taken in, one by one, to see Mr. Cardilli, who checked their names off on a list. Director Cardilli asked Mr. Jones if he would take and circulate petitions for Mayor Daley. After being asked twice to take the petitions Mr. Jones responded "Why? What would happen if I don't?" and Director Cardilli repeated, his voice rising for emphasis, *"Are you going to take them?"* Mr. Jones did. All of this took place during regular working hours. Mr. Jones testified that he feared for his job if he did not take and circulate the petitions. It was stipulated by the petitioners that Mr. Jones' testimony was true not only as to him but as to the other sanitation workers involved. [Petition 4a-5a]

Mr. Cardilli was the Director of Administration for the City's Department of Streets and Sanitation. His responsibilities included personnel matters for the Department. He kept the personnel files for the Department in his office.

There was evidence that on the same day a number of other Third Ward City and Cook County employees were also summoned downtown to be asked by their employment superiors to circulate the Daley petitions.

The Decisions Below

The District Court found that the events in question violated the Judgment. The Court found:

> "10. The treatment of all six employees, as described above, was inherently coercive and intimidating of them.
>
> 11. On the basis of all of the evidence—including but not limited to the facts set forth in paragraph 4, the fact that Richard J. Daley's petitions of candidacy were filed with the City Clerk prior to 8:20 a.m. on December 18, and the fact that other patronage jobholders from the Third Ward were talked to about taking Daley petitions by their employment superiors in other governmental agencies on December 18 or 19—the Court finds that the purpose of calling the six employees down to City Hall and urging them to take petitions was to determine whether they would support Mayor Daley's candidacy and/or to coerce and intimidate them by making clear that their departmental superiors, who controlled their jobs, expected them to support Mayor Daley's candidacy.
>
> 12. By reason of the foregoing, both the City of Chicago and Michael Cardilli violated paragraph E of the Judgment."

The court entered findings of civil contempt against Mr. Cardilli and the City and directed the City and certain other defendants to give additional notice of the Judgment prior to the 1975 mayoral election. Plaintiffs were also awarded their fees and costs in the contempt proceeding totaling $9,734. Contrary to the repeated statements in the Petition, no fine, monetary damages or punishment of any kind was imposed on the petitioners.

No defendant appealed the order directing that additional notice of the Judgment be given to affected employees. The

City and Mr. Cardilli appealed the finding of civil contempt. On appeal the Court of Appeals affirmed the findings of civil contempt and the award of fees and costs. No petition for rehearing was filed.

The mandate of the Court of Appeals has now issued, that court having denied petitioners' motion for a stay pending disposition of the Petition for certiorari as frivolous. Mr. Justice Stevens denied petitioners' motion to recall the mandate.

ARGUMENT

Respondents respectfully submit that a writ of certiorari should not issue because the case as now before the Court presents no important issues of federal law which require decision by this Court. Moreover, the matters raised in the Petition were, it is respectfully submitted, correctly decided below.

I. NO IMPORTANT ISSUES OF FEDERAL LAW ARE INVOLVED

The Petition raises no legal issues of sufficient importance to merit review. Indeed, it does not even assert that the case presents important issues of federal law which require ruling by this Court. Nor does the Petition provide any other appropriate reason why the Court should grant the writ. Rather, the Petition primarily concerns the sufficiency of the evidence and the application of uncontested legal principles to the facts of the case. These are not matters which require review by this Court.

II. THE QUESTIONS PRESENTED IN THE PETITION WERE CORRECTLY DECIDED BELOW

Not only are the points raised in the Petition not of sufficient importance to merit review they were, respondents submit, correctly decided below.

A. A Civil Contempt Proceeding Was Proper to Remedy the Violations of the Judgment

The Petition [10-12] argues that because the violations of the Judgment had taken place before the contempt proceeding began, civil contempt could not lie. It also argues that the contempt proceeding here resulted in punishment which was

not the proper office of civil contempt. [12-17] Neither argument has merit.

It was uncontested that civil contempt lies for remedial reasons—either to remedy past violations of a judgment or to enter additional relief to ensure compliance with the court's order. *McComb* v. *Jacksonville Paper Co.*, 336 U. S. 187, 193 (1949).

Here the civil contempt petition sought purely remedial civil relief, both to undo the effect of the violations and to ensure future compliance with the Judgment. [Petition 8a, note 9] And the relief granted was purely remedial. The order to give additional notice to employees as to the Judgment served to help undo the coercive and intimidating effect of the violations. It also served to effectuate the Judgment and ensure its future compliance. The findings of contempt themselves, in addition to forming the basis for the remedial order, similarly served remedial purposes by exposing the violations and preventing further coercion of the employees involved.

The suggestion in the Petition [12] that civil contempt cannot lie for past actions is wholly wrong. A court would be weak indeed if it could not enter additional orders to undo the effect of violations of its Judgment or to take steps to prevent reoccurrence of violations.

Contrary to the repeated and erroneous assertions of the Petition, *no punishment of any kind was imposed.* No fine or award of damages was imposed. No incarceration was ordered. The only monetary aspect of the case was the award of plaintiffs' costs and reasonable attorneys fees. Petitioners admitted below that an award of attorneys fees is appropriate in civil contempt.

There is no conflict, as suggested by the Petition, between the decision below and *Skinner* v. *White*, 505 F. 2d 685 (5th

Cir. 1974), where a contempt proceeding was reversed because the defendants could not tell if civil or criminal contempt was involved. Here, there was no confusion as to the nature of the proceeding. The contempt petition clearly stated that civil contempt was alleged and, as the Court of Appeals held, "the proceedings were clearly civil in nature". [Petition 9a]

Moreover, it may be noted that petitioners' various points as to the propriety of civil contempt were, by and large, not adequately raised in the District Court.

B. The Evidence Was Sufficient to Support the District Court's Findings

The Petition [17-21] argues that in a number of respects the evidence was insufficient to support the findings of civil contempt. Obviously, these are not matters which normally require Supreme Court review. In any event, respondents submit that the evidence was more than sufficient to support the findings below.

1. The Evidence Was Sufficient to Show Violations of the Injunctive Provisions of the Judgment

The Petition [17] urges that the evidence did not show violations of paragraphs E(1) and E(2) of the Judgment as charged in the petition. This is wholly wrong. The Court of Appeals correctly held that the coercion of City workers into supporting the incumbent in his reelection bid, as found by the District Court, was sufficient to show a violation of paragraph E(1) of the Judgment. That paragraph prohibits affecting the terms of public employment for political reasons. Moreover, it was *admitted* that paragraph E(2), which prohibited political work being done on public time, was violated. [Petition 10a]

2. The Evidence Was Sufficient to Show That Mr. Cardilli Had Notice of the Judgment

The Petition [18] also urges that the evidence was insufficient to show that Mr. Cardilli had notice of the Judgment. To the contrary, there was very substantial evidence that Mr. Cardilli did have this notice. As the Court of Appeals pointed out, the City had represented to the District Court that it had fully notified its employees of the Judgment. The court concluded:

> "[I]t defies our imagination to believe that a high-ranking City official such as Cardilli was ignorant of the 1972 judgment." [Petition 12a]

3. The Evidence Was Sufficient to Show That Actions of Mr. Cardilli Were an Abuse of His City Authority

The Petition [20] argues that the evidence was insufficient to support the conclusion that Mr. Cardilli's conduct was performed within the scope of his City employment. Thus it argues that the City was not properly made a respondent in the civil contempt petition.

In fact, however, the evidence clearly showed that the acts of Mr. Cardilli were within the scope of his employment. He held a high office in the City, he had responsibility for personnel matters for his City department, he maintained personnel files in his office and he used other City supervisors junior to him to carry out the violations. As the Court of Appeals held:

> "It is obvious that . . . summoning employees to City Hall and interviewing them there . . . [was] well within the scope of employment of the person holding the position" [Petition 13a]

It was, therefore, entirely appropriate for the City to be required to take the necessary steps to remedy the violations of the Judgment committed by its high ranking officials.

CONCLUSION

For these reasons, respondents respectfully submit that the Petition for a writ of certiorari should be denied.

Respectfully submitted,

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